

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

488M0421

SENATE EDUCATION COMMITTEE ENGROSSED NO.

SB 81 - 02/09/2006

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Schoenbeck, Abdallah, Duniphan, Kelly, Kloucek, Koetzle, McCracken, Moore, and Olson (Ed) and Representatives Cutler, Haley, Jensen, McCoy, Murschel, Nelson, and Roberts

1 FOR AN ACT ENTITLED, An Act to prohibit the acquiring or selling of certain
2 communications records and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Communications provider," a provider that offers telecommunications services for
6 a fee to the public, regardless of the facilities used, or a provider of IP-enabled voice
7 service;

8 (2) "Confidential communications records information," information that relates to the
9 quantity, technical configuration, type, destination, incoming calls, outgoing calls,
10 text messaging, location, or amount of use of a service offered by a communications
11 provider subscribed to by any customer of that communications provider which is
12 made available to a communications provider solely by virtue of the relationship
13 between the communications provider and the customer, or information contained
14 in any bill related to the product or service offered by a communications provider and



received by any customer of the communications provider;

- (3) "IP-enabled voice service," the provision of real-time two-way voice communications offered to the public, transmitted through customer premises equipment using transmission control protocol/internet protocol (TCP/IP), or a successor protocol, for a fee, whether part of a bundle of services or separately, with two-way interconnection capability such that the service can originate traffic to, and terminate traffic from, a public switched telephone network.

Section 2. No person may obtain, or attempt to obtain, confidential communications records information from a communications provider, without authorization from the customer to whom such confidential communications records information relates, by knowingly and intentionally:

- (1) Making false or fraudulent statements or representations to an employee of a communications provider;
- (2) Making false or fraudulent statements or representations to a customer of a communications provider;
- (3) Providing false documentation to a covered entity knowing that the documentation is false; or
- (4) Accessing customer accounts of a communications provider via the internet.

A violation of this section is a Class 1 misdemeanor.

Section 3. No person may knowingly and intentionally sell, or attempt to sell, confidential communications records information from a communications provider without authorization from the customer to whom such confidential communications records information relates. A violation of this section is a Class 6 felony.

Section 4. This Act may not be construed to prevent any action by a law enforcement agency, or any officer, employee, or agent of a law enforcement agency, to obtain confidential

1 communications records information from a communications provider pursuant to a subpoena
2 or court order.

3 Section 5. This Act does not prohibit a communications provider from obtaining, using,
4 disclosing, or permitting access to any confidential communications records information, either
5 directly or indirectly through its agents as otherwise authorized by law.

6 Section 6. This Act does not prohibit a communications provider from obtaining, using,
7 disclosing, or permitting access to any confidential communications records information in
8 connection with the sale or transfer of all or part of its business, the purchase or acquisition of
9 all or part of a business, or the migration of a customer from one communications provider to
10 another.

11 Section 7. Any consumer who claims to have been adversely affected by any act or practice
12 declared to be unlawful by section 2 or section 3 of this Act may bring a civil action for the
13 recovery of twice the actual damages suffered or five hundred dollars, whichever is greater, as
14 a result of the willful act or practice. In addition, the consumer may collect court costs and
15 reasonable attorney fees expended by the consumer to bring an action under this section.

16 Section 8. Whereas, this Act is necessary for the support of the state government and its
17 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
18 full force and effect from and after its passage and approval.